ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author:	Jones	Analyst:	Rachel Coco	Bill Number:	AB 853
Related Bills:	See Legislative History	Telephone:	845-4328	Introduced Date:	February 18, 2005
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Extension Of Lien Until Liability Is Satisfied For Use Of Earnings Withholding Orders

SUMMARY

This bill would extend the timeframe under which a state tax lien is effective only for purposes of the use of Earnings Withholding Orders for Taxes (EWOT).

PURPOSE OF THE BILL

The purpose of this Franchise Tax Board (FTB) sponsored bill is to eliminate the need to process taxpayer accounts manually and to allow use of the most cost-effective collection method available.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2006, and operative as of that date.

POSITION

Support.

On December 1, 2004, the Franchise Tax Board voted 2-0, with the representative from the Department of Finance abstaining, to sponsor the language included in this bill.

ANALYSIS

FEDERAL/STATE LAW

Under both federal and state income tax laws, in general, once a tax debt becomes delinquent, a tax lien automatically arises by operation of law for that amount. A tax lien is a claim upon real and personal property for the satisfaction of a debt. For federal purposes, a tax lien exists as long as the delinquency exists or until it becomes unenforceable due to the 10-year statute of limitation on collection.

Current state law does not provide a statute of limitation on the collection of tax debts. For state purposes, a state tax lien exists for 10 years, unless the liability becomes satisfied or a Notice of State Tax Lien is recorded with a county recorder's office or the Secretary of State. The recording of the notice establishes a public record of the existence of the state tax lien against all real and personal property belonging to the taxpayer. Once a state tax lien has been recorded, it can be renewed in 10-year increments for a maximum of up to 30 years.

Board Position:			Department Director	Date
_______ S	_______ NA	_______ NP		
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Current state law authorizes FTB to use EWOTs to collect delinquent tax liabilities for which a state tax lien is in effect. An EWOT is a continuing wage garnishment based on a percentage of a debtor's earnings, not to exceed 25% of disposable income. Since EWOTs are generated using an automated process, EWOTs are FTB's most cost-effective collection tool.

Program Background

The department uses an automated tax collection system to collect delinquent taxes. The automated system searches through more than 220 million income records, including wage, dividend, and interest information, to locate an individual's assets. Once assets are located, the system can issue levies on bank accounts, wages, commissions, rents, and other miscellaneous sources of income. The system also automatically issues Notices of State Tax Liens when several conditions are met, namely locating a valid address for the debtor and a billable balance.

While the automated system can generate EWOTS and Notices of State Tax Liens, the system lacks the ability to release an EWOT once a lien has expired. As a result, department staff must manually identify taxpayer accounts where the lien has expired and release the EWOT.

THIS BILL

This bill would extend the life of a state tax lien, only for purposes of the use of EWOTs, until the underlying tax liability is satisfied. By extending the state tax lien, this bill would eliminate a manual workload and allow the department to continue collecting delinquent tax liabilities using the most cost-effective and efficient collection method available.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs or operations.

OTHER STATES' INFORMATION

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota,* and *New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Illinois state law provides that once a lien arises, the lien may continue for a period of 20 years. With a lien in place, a levy can be placed upon the wages of a taxpayer and continues until the amount of the liability is paid, unless the employment is terminated or the notice of levy is rescinded or modified.

Massachusetts state law provides that once a lien arises, a levy may be placed on the salary or wages of a taxpayer and shall continue from the date the levy is first made until the liability is satisfied or becomes unenforceable by reason of lapse of time. Current *Massachusetts* law provides that liens are valid for 10 years from the date of creation. It does not appear that the lien can be extended.

Michigan state law provides that the effect of a levy on salary or wages is continuous from the date the levy is first made until the liability is satisfied. It does not appear that a lien must be in place in order to levy wages.

Minnesota state law allows a levy to be filed upon a taxpayer's wages for which a lien is in effect and specifies that the levy shall continue until the liability is satisfied or unenforceable by law. A lien is enforceable for 10 years from the time the lien is filed and may be renewed for an additional 10 years.

New York state law provides that once a tax warrant, similar to CA state tax lien, has been filed to publicly record the debt, an Income Execution may be issued and continues until the liability has been satisfied. An Income Execution allows for wage deductions not to exceed 10% of gross income.

FISCAL IMPACT

Implementing this bill would not significantly impact the department's programs or operations.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue gains:

Expanded Use of EWOTs			
Fiscal Years	2005-06	2006-07	2007-08
Revenue Impact	+$500,000	+$500,000	+$500,000

Revenue Discussion

This bill would extend a state tax lien to allow the department to continue the use of EWOTs to collect delinquent tax liabilities until the liability has been satisfied. It is estimated that approximately 650 accounts per year would not be collectable without the use of an EWOT. Assuming those accounts have an average balance of $800, there would be approximately $500,000 in uncollectible tax liabilities (650 accounts x $800 average account balance). As a result of extending the state tax lien to allow the EWOT to continue until the liability is satisfied, it is estimated that this bill would result in a revenue gain of $500,000, annually.

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